

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:	)	PROMESA
	)	Title III
THE FINANCIAL OVERSIGHT AND)	
MANAGEMENT BOARD FOR PUERTO RICO,	)	No. 17 BK 3283-LTS
)	
as representative of	)	(Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO,)	
<i>et al.</i>)	
)	
Debtors.)	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO,)	
	)	No. 17 BK 4780-LTS
as representative of)	
PUERTO RICO ELECTRIC POWER)	
AUTHORITY ("PREPA"))	
)	
Debtor. ¹	)	Re: 17-BK-3283-LTS, ECF Nos.
	)	8789, 8838, 8850, 8886, 10307,
	)	10607, 13253, 13373

**STATUS REPORT PURSUANT TO JUNE 5, 2020 ORDER
REGARDING COBRA ACQUISITION LLC'S MOTION FOR ALLOWANCE AND
PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Judge Laura T. Swain:

The Puerto Rico Electric Power Authority (“PREPA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtor’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” and together with PREPA and the Oversight Board, the “Government Parties”), respectfully submit this Status Report pursuant to the Court’s *Order Regarding Cobra Acquisitions LLC’s Motion for Allowance and Payment of Administrative Expense Claims*, dated June 5, 2020 (Docket Entry No. 13373), which directed the Government Parties to file an informative motion as to the status of the criminal proceedings in *United States v. Tribble et al.*, Case No. 19-CR-541-FAB (D.P.R.) (the “Criminal Case”) and the pending audit and investigation of the Federal Emergency Management Agency (FEMA).²

The Government Parties respectfully state as follows:

I. Status of the Pending Criminal Matter

With respect to the Criminal Case, on November 2, 2020, the United States and the two remaining defendants, Asha Tribble and Keith Ellison, appeared before the Honorable Francisco A. Besosa (U.S.D.J., D.P.R.) for a pretrial conference. At the conference, the Court adjourned the date of the jury trial, previously scheduled to begin on January 21, 2021, and ordered to parties to appear for another pretrial conference on January 21, 2021, at which time a new trial date may be

² On January 22, 2020, the Government Parties and Cobra Acquisitions LLC (“Cobra”) filed a *Joint Informative Motion Pursuant to Order of October 19, 2019 regarding Cobra Acquisitions LLC’s Motion for Allowance and Payment of Administrative Expense Claims* (Docket Entry No. 10307). On May 27, 2020, the Government Parties and Cobra filed a *Joint Status Report Pursuant to February 3, 2020 Order Scheduling Further Status Conference in Connection With Cobra Acquisition LLC’s Motion for Allowance and Payment of Administrative Expense Claims* (Docket Entry No. 13253) (the “May Status Report”). Terms capitalized but not defined herein shall have the meaning ascribed to them in the May Status Report.

set. To the Government Parties' knowledge there have been no further developments in this matter since the May Status Report.

II. Status of FEMA's Review of Cobra's Contracts with PREPA

On July 27, 2020 the Office of the Inspector General, Department of Homeland Security ("OIG") issued a report entitled "FEMA's Public Assistance Grant to PREPA and PREPA's Contracts with Whitefish and Cobra Did Not Fully Comply with Federal Laws and Program Guidelines" (OIG-20-57) (the "July OIG Report").³ The July OIG Report found, among other things, that "some of the Cobra contract costs may not be reasonable and eligible for the [public assistance ("PA") grant program]" and that "FEMA may have reimbursed PREPA for Cobra contract costs that are ineligible for PA funds." July OIG Report at 4–5.

The July OIG Report also states that FEMA, in its last update to the OIG regarding the reasonableness analysis,⁴ notified OIG that "FEMA and U.S. Army Corps of Engineers will not complete the analysis of Cobra contract costs for reasonableness until the end of August 2020" and that FEMA estimated "resolution and closure of the recommendation will not occur until May 2021." July OIG Report at 14 n.4. To the Government Parties knowledge, however, the reasonableness analysis has not yet been completed.⁵

FEMA has recently requested PREPA to provide additional documentation of costs incurred by PREPA under its Master Services Agreement with Cobra Acquisition, LLC.

³ The July OIG Report is available at <https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations>.

⁴ The reasonableness analysis is being performed pursuant to the OIG report entitled "FEMA's Cost Eligibility Determination of Puerto Rico Electric Power Authority's Contract with Cobra Acquisitions LLC" (OIG-19-52, July 3, 2019).

⁵ On June 9, 2020 in an 8-K filing with the SEC, Cobra's parent company Mammoth Energy Services, Inc. made public a copy of a prior reasonableness report, dated March 28, 2019, performed for FEMA by the RAND Corporation. A copy of the report is available at <https://www.sec.gov/Archives/edgar/data/1679268/000167926820000039/a2020-06x098xkrandrepo.htm>.

Specifically, FEMA requested this additional information as it finalizes its reasonable cost analysis for work claimed by PREPA for FEMA disaster assistance. FEMA's disaster assistance is provided through federal grants, and must be supported by documentation that the work was required by the disaster and was completed at a reasonable cost. Some of the documentation requested by FEMA—specifically as it related to the shipment of equipment used by Cobra in its power restoration work—had not been previously provided to or maintained by PREPA. Cobra is currently working to identify and provide this information even though this level of invoice documentation had not previously been required.

FEMA personnel have not specified to PREPA a date for completing its report on the reasonableness of costs invoiced by Cobra for power restoration work. PREPA will continue to work cooperatively with Cobra to provide FEMA with all remaining information FEMA requires to complete its review of Cobra's charges.

III. The Stay Should Remain Unmodified

The Government Parties submit that the stay in this matter should remain in effect. The reasons for continuing the stay have been addressed at length in the Government Parties' prior briefing.⁶ In sum, both the Criminal Case and FEMA's review of the reasonableness of the amounts charged by Cobra remain pending, and the resolution of these matters might significantly impact the merits and outcome of Cobra's Motion for Allowance and Payment of Administrative Expense

⁶ See e.g., *Joint Informative Motion Pursuant to Order of October 17, 2019 Regarding Cobra Acquisition LLC's Motion for Allowance and Payment of Administrative Expense Claims* [Docket Entry No. 10307] at 9–11, 13–14; *Opposition of the Oversight Board, AAFAF, and PREPA to Cobra Acquisition LLC's Urgent Motion to Modify the Stay Order and Allow the Undisputed Tax Claims* [Docket Entry No. 12690].

Claims. The updates described in this report do not constitute a material change warranting any modification of the stay in this matter.⁷

New York, New York
December 2, 2020

Respectfully submitted,

O'NEILL & BORGES LLC

By: /s/ Hermann D. Bauer
Hermann D. Bauer
USDC No. 215205
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Telephone: (787) 764-8181
Facsimile: (787) 753-8944
Email: hermann.bauer@oneillborges.com

PROSKAUER ROSE LLP

By: /s/ Paul V. Possinger
Martin J. Bienenstock*
Paul V. Possinger*
Ehud Barak*
Gregg M. Mashberg*
Eleven Times Square New York, NY 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900
Email: mbienenstock@proskauer.com
ppossinger@proskauer.com
ebarak@proskauer.com
gmashberg@proskauer.com

* admitted *pro hac vice*

*Attorneys for the Financial Oversight and
Management Board as representative of the
Puerto Rico Electric Power Authority*

⁷ See Memorandum Order Denying Cobra Acquisitions LLC's Urgent Motion to Modify the Stay Order and Allow the Undisputed Tax Claims [Docket Entry No. 13208-1] at 11.

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.

By: /s/ Katuska Bolaños

Katuska Bolaños

kbolanos@diazvaz.com

USDC-PR 231812

290 Jesús T. Piñero Ave.
Oriental Tower, Suite 1105
San Juan, PR 00918
Tel. (787) 395-7133
Fax. (787) 497-9664

*Co-Attorneys for Puerto Rico Electric
Power Authority*

O'MELVENY & MYERS LLP

By: /s/ Maria J. DiConza

John J. Rapisardi*

Maria J. DiConza*

Nancy A. Mitchell*

7 Times Square

New York, NY 10036

Telephone: (212) 326-2000

Facsimile: (212) 326-2061

Email: jrapisardi@omm.com

mdiconza@omm.com

nmitchell@omm.com

* admitted pro hac vice

*Attorneys for the Puerto Rico Fiscal
Agency and Financial Advisory
Authority and Puerto Rico Electric Power
Authority*